Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
Carriage of Digital Television Broadcast Signals	)	CS Docket No. 98-120
Amendments to Part 76 of the Commission's Rules	)	
Implementation of the Satellite Home Viewer Improvement Act of 1999	)	
Local Broadcast Signal Carriage Issues	)	CS Docket No. 00-96
Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals	)	CS Docket No. 00-2

To: The Commission

COMMENTS OF STC BROADCASTING, INC.

STC Broadcasting, Inc. ("STC"), which wholly owns the licensees of eleven television stations in medium and small television markets throughout the country, respectfully submits these comments in response to the above-referenced *Further Notice of Proposed Rulemaking*. [1] STC urges the Commission to adopt a dual must-carry regime. Without a mandatory carriage rule for both NTSC and digital signals, smaller market stations will have no possibility of recovering the substantial investment in digital facilities – an expense that can outstrip a station's annual revenues.

1/ *In the Matter of Carriage of Digital Television Broadcast Signals, Amendments to Part 76 of the Commission's Rules, Implementation of the Satellite Home Viewer Improvement Act of 1999, Local Broadcast Signal Carriage Issues & Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals*, First Report & Order and Further Notice of Proposed Rulemaking, CS Docket Nos. 98-120, 00-96 & 00-2 (rel. January 23, 2001) ("*Further Notice*").

The realities of the DTV transition for STC's small-market stations are compelling evidence in support of a dual carriage requirement. Based on these realities, STC addresses each of the following issues raised by the *Further Notice* regarding multiple carriage of local television signals during the digital transition period:

- specific empirical information to demonstrate how mandatory multiple carriage would serve an important or substantial government interest;
- the necessity of a multiple carriage requirement to hasten the digital transition and the return of analog spectrum; and
- additional information to identify the risks that digital transition without multiple carriage poses to free, over the air television.

I. FACTUAL BACKGROUND

STC has first-hand experience with the dangers that the digital television transition poses to free, local television broadcast stations in smaller markets. STC indirectly controls television stations in eight small and medium-sized television markets, ranging from Providence-New Bedford, Rhode Island (ranked 49th in the nation) to Fargo-Valley City, North Dakota (120th), Minot-Bismarck-Dickinson, North Dakota (152nd), Abilene-Sweetwater, Texas (160th) and San Angelo, Texas (196th). [2]/ As a rule, cable penetration exceeds 60 percent in each of these smaller markets, with a high of 79 percent (in the San Angelo, Texas market). [3]/

[2]/ *Television & Cable Factbook 2001* at A-5 (2001).

[3]/ Broadcasting & Cable Yearbook 2000 at C-5 (2000).

A. Costs of the Digital Transition to Small-Market Stations Are Staggering When Compared to Other Aspects of Those Stations' Budgets.

As a result of the mandatory digital roll-out, STC's small-market stations are facing bills digital equipment costs that rival those stations' total annual operating budgets. These initial DTV roll-out costs – which include expenditures for necessary digital equipment such as transmitters, antennas, cables, microwave upgrades, and encoders -- do not even account for the additional personnel costs, including training, required to operate two stations or any additional programming costs involved in obtaining both analog and digital programming rights.

A comparison of digital roll-out costs to other aspects of a small-market television station's budget for analog operations illustrates the enormous burden that rapid digital roll-out imposes on these stations. For example, in its Texas markets, STC will be compelled to spend $1.7 million -- or more than five times what it spends annually on non-digital capital investments -- on the equipment and installation necessary for initial DTV roll-out. Worse, STC's projected roll-out costs for these small markets will equal or exceed *seventeen times* what it spends annually on analog programming for these stations.

Other small markets tell a similar story. In Fargo, North Dakota, STC plans to spend nearly four times what it spends annually on non-digital capital expenditures on its initial DTV roll-out. Likewise, it will spend nearly four times what it budgets annually for analog programming on this market's roll-out costs. And in neighboring Bismarck, STC will have to spend $4 million -- *ten times* more than what it would otherwise spend annually on the market's capital expenditures -- to roll-out digital transmission capabilities. Similarly, it will have to spend more than ten times that market's analog programming budget for its initial DTV roll-out in that market.

Even when viewed in comparison to these small-market stations' total operating costs, the immediate, upfront costs of DTV are staggering. For example, in STC's Texas markets, the initial equipment and installation costs of DTV roll-out exceed half of the stations' total annual operating costs. But it gets worse. In the Bismarck market, it will be almost as expensive for STC to purchase and install the equipment necessary for DTV roll-out as it will for STC to operate its analog stations in the market for an entire year.

These comparisons demonstrate that small-market stations are rightly concerned that the digital transition will hinder their ability to provide quality programming in their markets. Even were the roll-out costs amortized over several years, they still would far exceed, on a yearly basis, the stations' annual non-DTV capital expenditure budgets. And these costs do not include the ongoing costs of actual digital operations -- including increased costs for electricity, training, upkeep, programming, and personnel -- the economic burdens of the digital transition clearly jeopardize small-market, local television stations' ability to deliver the important services that they have historically offered, such as quality local news and information.

B. Small-Market Stations Cannot Hope to Obtain Digital-Related Revenues Without a Dual Must-Carry Requirement.

Local broadcast stations, unlike cable or other subscription services, survive on a single source of revenue – advertising. Ad revenue is dependent on viewership. There is very limited potential for over-the-air viewership of digital broadcast signals in the foreseeable future because consumers lack digital reception devices and cable systems are not generally carrying local stations' digital signals (in either digital format, or in a converted analog format). [4]/ Accordingly, even if a local station were able to provide several streams of programming through its digital signal (in addition to meeting the Commission's simulcast requirements), it will not be able to sell sufficient advertising to defray the costs of such programming until it has attained some level of guaranteed reception, either off-air or via cable.

STC's own recent experience demonstrates the lackluster revenue potential for new digital broadcast programming outlets during the digital transition. No advertiser has expressed an interest in spending more money to advertise on any of STC's digital signals. On the other hand, program vendors are suggesting that they might raise their prices if STC broadcasts their programs on its digital channels.

Ancillary or supplementary services also do not promise new real earnings potential. None of STC's small-market stations, have yet experienced any demand to supply other ancillary services over their digital spectrum. And common sense suggests that such demand is not likely to emerge, if ever, until such services have been well-tested by bigger economic markets, a process which could last even longer than the transition to digital. Regardless, there is no basis for thinking that hypothetical

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[4]/ According to a recent presentation by the Chief of the Commission's Mass Media Bureau, fewer than 650,000 digital television sets were sold in the entire country in 2000, as compared to the 25 million television sets sold yearly in the United States. *See* Roy Stewart, Chief, Mass Media Bureau, Presentation to the Commission (April 19, 2001) (available at http://www.fcc.gov/dtv/dtv_presentation.pdf). Many of these sets were sold to dealers, not to consumers, and, more important, many do not contain an integrated tuner – which makes it impossible for the television set to receive a DTV signal over the air. *Id.* Even if the sales of digital television sets were to increase by 50 percent each and every year, and even if all those sets include an integrated tuner, it would take more than seven years before television sets able to receive an off-air digital signal would make up even half of the nation's current annual television sales.

ancillary services will provide anywhere near sufficient revenue during the transition period to cover even a fraction of the upfront costs inherent in DTV roll-out.

The result of these harsh cost and revenue realities is the potential loss of local television ownership diversity and reduced competition. A recent industry analysis summarizes the adverse effect of the DTV transition on small and medium-market stations thusly: [5]/

> Many owners of medium and small market television stations, faced with digital conversion costs accounting for a large percentage of (or even exceeding) their station's present values, are questioning whether to remain in the industry.

STC itself understands the economic realities of DTV transition, and urges the Commission to take immediate steps to provide some measure of relief – in the form of a dual carriage requirement – to local television stations in medium or small markets.

II. THE COMMISSION IMMEDIATELY SHOULD AFFORD RELIEF TO SMALL-MARKET STATIONS DURING THE DIGITAL TRANSITION BY REQUIRING DUAL CARRIAGE.

In *Turner,* the Supreme Court confirmed that mandatory carriage of local television stations was justified if it advanced three specific, content-neutral goals: preservation of free, local, over-the-air television; the promotion of widespread dissemination of information from a multiplicity of video sources; and the promotion of fair competition. [6]/ A digital carriage requirement advances each of these goals, and

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[5]/ BIA Financial Network, Inc., *State of the Television Industry: Television Transactions 2000* at 16 (2001).

[6]/ *Turner Broadcasting System, Inc. v. United States*, 512 U.S. 622, 662 (1994). As the Commission already has concluded, a dual carriage requirement also is consistent the 1992 Cable Act. *See Further Notice* at ¶ 14. That statute makes clear that it is the Commission's responsibility to adapt signal carriage requirements of cable systems "necessary to ensure cable carriage of such broadcast signals of local commercial television stations" upon an introduction of new signal standards.

the further important governmental (and consumer) interest of facilitating a rapid transition to digital television, consistent with the Cable Television Consumer Protection and Competition Act of 1992.

Under the first prong of *Turner*, a multiple carriage requirement is critical to the preservation of free, local, over the air television stations. The roll-out costs of digital are so expensive that an assurance of digital carriage is necessary to sustain smaller stations during the nation's transition to digital video. Free, over the air television stations -- which are required by regulation to implement the digital transition on an accelerated timetable – are dependent on advertising for revenues. These stations cannot afford to continue providing a service if approximately two thirds of potential audience (i.e., those who subscribe to cable), will not have real access to their digital programming. As STC has demonstrated, even initial DTV roll-out costs force stations to incur upfront expenditures that can consume a station's entire, pre-digital operating budget. Worse, such expenditures are not offset by revenues, as there is no established consumer demand for digital television, and any ancillary uses of digital spectrum – especially in smaller markets -- offer further upfront risk and only hypothetical economic opportunity. All of these burdens are exacerbated during the initial phases of the digital transition, when transition costs are highest and consumer awareness of digital is lowest. Simply stated, the costs of the DTV transition to many smaller market stations are not sustainable unless stations have an immediate hope of being able to reach a number of consumers who may not want to spend the thousands of dollars necessary to acquire a digital television set with an integrated tuner.

Under the second prong of *Turner*, a multiple carriage requirement is critical to a widespread dissemination of information from a multiplicity of video sources. In addition to the possibility that many local stations would like to transmit several digital channels at some point during the transition,[7] television stations are the only real-time video programming supplier that provides their services free to the viewer. And television stations, unlike cable networks, are subject to specific local multiple ownership restrictions, which ensure that there will be a diversity of station ownership in any particular market. However, as the recent BIA report has confirmed, [8] the uncertainty of the DTV transition has caused many small-market station owners to consider sale of their stations, a result in conflict with the goal of additional programming diversity. Accordingly, the goal of video programming diversity demands that the Commission ensure the viability of as many local television broadcast stations as possible – a goal most likely to be achieved with a multiple carriage requirement.

Under the third prong of *Turner*, without any multiple carriage requirement, the Commission would unfairly impair local television stations' ability to compete with cable networks, virtually all of which are vertically integrated with cable operators or which have regional or national distribution. In contrast to the immediate and extensive burdens the Commission's digital transition timetable imposes on broadcasters, cable

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7/ In this regard, it would be particulary perverse of the Commission to deny mandatory carriage of local stations' digital signals because they are "duplicative" of the station's analog programming, when it is the Commission's rules that impose simulcast requirements. *See* 47 C.F.R. § 73.624(f) (requiring increasing amounts of analog programming to be simulcast on at least one of a station's digital channels, beginning in April 2003). Furthermore, without a dual must-carry requirement, there will be no incentive whatsoever for broadcasters to offer different programming on their digital channels.

8/ *See supra* at 6.

operators, which should be able to realize immediate competitive benefits from digital technology, and which bring video programming to roughly 70 percent of the nation's population, [9] have been able to time their entry into the digital marketplace according to each operator's own business objectives. And recent advances in digital compression technology have diminished (and will continue to diminish) the amount of spectrum required for cable systems to transmit a channel of video programming. (For example, the ability to compress a digital signal now enables cable operators to transmit multiple channels in the bandwidth that, at the time of passage of the 1992 Cable Act, would have been required to transmit a single channel.) In light of such realities, a dual carriage requirement would more fairly apportion the burdens of the digital transition to preserve the ability of small-market, local broadcast stations dependent to compete.

III. CONCLUSION

In light of the immense upfront costs of the digital transition, free, over the air television stations – especially those in smaller television markets – need prompt assistance if they are to maintain their programming quality during the transition and to encourage more consumers to transition to digital. Without compulsory carriage of small-market television stations' digital signals during the digital transition period, many viewers will not even know that digital broadcast signals exist. Also, many stations will be unable to justify the investment necessary to add innovative features or new programming that would cause viewers to spend the money necessary to acquire a digital television set.

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[9] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Seventh Annual Report, CS Docket No. 00-132 (released January 8, 2001) at 13.

Accordingly, and for all the foregoing reasons, STC urges that the Commission adopt a dual-carriage requirement for local television stations at the very least in the nation's medium and smaller-sized television markets.

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By: ______________________
David A. Fitz

Its Senior Vice President

Dated: June 11, 2001

DECLARATION

I, David A. Fitz, Senior Vice President of STC Broadcasting, Inc., declare under penalty of perjury that the foregoing comments are true and accurate to the best of my knowledge, information and belief.

David A. Fitz

Dated: June 11, 2001